

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 19 1998

(Anon)

OFFICE OF
MANAGING DIRECTOR

86-285

Mr. Ronald R. Grawert
Chief Executive Officer
MobileMedia Corporation
2101 Wilson Blvd.
Suite 935
Arlington, VA 22201

Re: Request for Waiver of Regulatory Fees

Dear Mr. Grawert:

This is in response to your request for waiver of the Fiscal Year 1998 (FY 1998) regulatory fees filed on behalf of MobileMedia Corporation and its subsidiaries. You state that MobileMedia has filed a voluntary petition for bankruptcy, with the United States Bankruptcy Court, District of Delaware. Previously, you submitted copies of the bankruptcy petition and we waived the FY 1997 fees for MobileMedia.

In Implementation of Section 9 of the Communications Act, FCC 95-257, ¶ 14, released June 22, 1995, the Commission found that a bankruptcy or receivership is sufficient to establish financial hardship, and that imposition of the regulatory fee could act as an impediment to the efforts of a trustee, debtor in possession, or receiver to assign a license to a new licensee. Thus, the Commission held that it would waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or are in receivership.

Based on your representations that MobileMedia has filed a voluntary petition for bankruptcy, your petition is granted. Accordingly, the FY 1998 regulatory fees for MobileMedia Corporation and its subsidiaries are waived. If you have any questions concerning the waivers please contact the Chief, Fee Section at (202) 418-1995.

Sincerely,


Mark Eger
Chief Financial Officer

000000 BCB-98-064

ENCLOSURE

MobileComm

2101 Wilson Boulevard
Suite 935
Arlington, VA 22201

Telephone: 703/312-5151
Fax: 703/312-5155

August 5, 1998

"STAMP-IN" COPY

Ronald R. Grawert
President &
Chief Executive Officer



MobileComm

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AUG - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

**RE: MobileMedia Corporation
REQUEST FOR WAIVER OF
FY 1998 REGULATORY FEES**

Dear Mr. Fishel:

On behalf of MobileMedia Corporation and its subsidiaries,¹ this is to request a waiver of the Fiscal Year 1998 (FY 1998) FCC Regulatory Fees. Exemption or substantial reduction of this fee will promote the public interest by assisting MobileMedia Corporation in providing service to its many subscribers and in maintaining its paging operations while emerging from Chapter 11 Bankruptcy reorganization.

Background

On January 30, 1997, MobileMedia Corporation filed petitions under Chapter 11 of the Bankruptcy Code.² The petition for Chapter 11 protection was necessary because, *inter alia*, MobileMedia Communications, Inc., a wholly-owned subsidiary of MobileMedia Corporation, was in default on over \$1 billion in secured and unsecured debt obligations. Further, in mid-November, one of MobileMedia Communication's key suppliers refused to continue providing equipment and services until it received payment of approximately \$34 million.

¹ MobileMedia Communications, Inc., MobileMedia Paging, Inc., MobileMedia DP Properties, Inc., MobileComm of the Southeast, Inc., MobileComm of the MidSouth, Inc., MobileComm of the West, Inc., MobileComm of the Northeast, Inc., MobileComm of the Southwest, Inc., Mobile Communications Corporation of America, MobileComm of Tennessee, Inc., MobileComm of Florida, Inc., MobileComm Nationwide Operations, Inc., MobileComm Southeast Private Carrier Operations, Inc. and FWS Radio, Inc.

² As a result, MobileMedia Corporation and its subsidiaries are currently operating as debtors-in-possession.

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Though a Chapter 11 filing was necessary, MobileMedia Corporation and subsidiaries have reached agreement with certain lenders regarding the terms of a post-petition revolving line of credit that is intended to allow the Company to continue to provide service to its subscribers. The approximately \$138,000 in Regulatory Fees for FY 1998 in this case represents a substantial expenditure given the Company's current need to harbor its working capital.

Waiver is Consistent with Commission Precedent

The Commission has indicated that it will waive payment of regulatory fees by licensees undergoing Chapter 11 bankruptcy proceedings because of the impact the fee would have on a licensee's ability to reorganize its operations.³ In fact, last year the Commission granted to MobileMedia a waiver of its FY 1997 Regulatory Fees for this very reason. See Letter to Mr. Ronald R. Grawert, CEO, from Marilyn J. McDermett, Associate Managing Director for Operations, dated September 12, 1997.

In addition, the Commission has granted requests for waiver of its regulatory fees to licensees in bankruptcy and/or financial hardship in numerous other cases. See letter to Mr. John S. Neeley, Esq., from Marilyn J. McDermett, Associate Managing Director for Operations, dated April 18, 1997 (which granted the request of American Broadcasting Systems, Inc. ("ABS") for a waiver and refund of the FY 1996 Regulatory Fees based on the fact that ABS was undergoing a Chapter 11 reorganization and was named a debtor-in-possession by the United States Bankruptcy Court); letters to Brian M. Madden, Esq., from Marilyn J. McDermett, Associate Managing Director for Operations, dated April 17, 1996 and October 25, 1996 (which granted the requests of Allan B. Mendelsohn, appointed trustee of the estate of the licensee of Radio Station WUSS by the United States Bankruptcy Court for waivers of the FY 1995 and FY 1996 Regulatory Fees for Radio Station WUSS); letters to Mr. Jack Lotsof, President of Stereo 97, Inc., from Marilyn J. McDermett, Associate Managing Director for Operations, dated February 23, 1996 and March 27, 1997 (which granted the requests of Mr. Lotsof for waivers of the FY 1994, FY 1995 and FY 1996 Regulatory Fees for FM Station KAVV-FM based on the licensee's existing state of undue financial hardship); and letter to R. Edward Price, Esq., from Marilyn J. McDermett, Associate Managing Director for Operations, dated November 14, 1996 (which granted the request to defer payment

³ *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12762 (1995) (MO&O).

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and waive the FY 1996 Regulatory Fees for Stations KVVQ (AM) and KVVQ-FM based on the fact that the stations were currently in receivership).

The Commission has also granted waivers in analogous circumstances. In fact, the Commission granted MobileMedia's similar petition for a waiver of the FCC filing fees associated with twenty-eight involuntary assignment applications that were triggered by MobileMedia's Chapter 11 Bankruptcy filing.⁴ The Commission found, among other things, that a grant of MobileMedia's petition would serve the public interest "by protecting the interests of the numerous subscribers that rely upon MobileMedia's paging services, as well as MobileMedia's creditors and investors."⁵ Also, in *Data Transmission Company, Bankrupt by Its Receiver*⁶, a receiver in bankruptcy of a microwave licensee petitioned for waiver of Commission filing fees associated with the involuntary assignment of licensees from Data Transmission Company to the receiver. The Commission granted the request on the grounds that the waiver would strengthen the receiver's ability to provide public service.

Grant of the instant waiver request also would be consistent with other actions the Commission has taken to waive licensee financial obligations. The most recent example involves the Commission's Order granting relief to PCS bidders.⁷ In that Order, the Commission suspended enforcement of its PCS installment payment rules and adopted three options for PCS licensees to satisfy their notes. The reason given for the action: "to provide limited relief to C block licensees having difficulty meeting their financial obligations to the Commission."⁸

⁴ See letter to Messrs. Guzman, Landerholm, Pettit and DeSoto, Counsel for MobileMedia, from Marilyn J. McDermott, Associate Managing Director for Operations, dated July 30, 1997.

⁵ *Id.*

⁶ 61 FCC 2d 263 (1976).

⁷ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Dkt. No. 97-82, *Second Report & Order & Further Notice of Proposed Rulemaking*, FCC 97-342, at ¶ 6 (rel. Oct. 16, 1997) (granting relief to PCS bidders from their "existing installment payment obligations").

⁸ *Id.* at ¶ 6 (emphasis added).

The Commission Has Authority to Waive Regulatory Fees

The Commission has the authority to waive any provision of its Rules or Orders "for good cause" under Section 1.3 of its Rules.⁹ As interpreted by the courts, a waiver is justified "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest"¹⁰ or if it "will not undermine the policy, served by the rule, that has been adjudged in the public interest."¹¹ That is the case here. The grant of MobileMedia's waiver would not undermine the goals of the fee program yet would further the public interest by addressing the needs of the Company, its creditors, and its subscribers during the bankruptcy reorganization. Thus, the underlying issue regarding MobileMedia's request is whether bankruptcy represents "special circumstances" that would justify a waiver of its regulatory fee payment obligation.

The Commission has long recognized that it should evaluate companies undergoing bankruptcy proceedings differently from other companies. Under such "special circumstances," the Commission has balanced the purpose of its rules against the needs of the company in bankruptcy and its creditors. For example, in the context of the assignment or transfer of licenses, the FCC has held -- and the Courts have affirmed -- that the agency should "balance the possible injury to the Commission's regulatory authority . . . against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party."¹² The circumstances in this case present a similar need for the FCC to "balance" the purpose of its rules against the needs of the Company, its creditors, and the subscribers it serves during bankruptcy reorganization.

⁹ 47 C.F.R. § 1.3 (1997).

¹⁰ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) at 1159).

¹¹ *WAIT Radio*, 418 F.2d at 1157.

¹² *La Rose v. FCC*, 494 F.2d 1145, 1149 (D.C. Cir. 1974); see also *Second Thursday Corp.*, 22 FCC 2d 515, recon. 25 FCC 2d 112 (1970).

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MobileMedia's anticipated contribution into the 1998 regulatory fee program, as noted above, would be approximately \$138,000. The contribution from all entities is estimated to be approximately \$171.5 million.¹³ Using this estimate, MobileMedia's contribution to the fee program would be only about eight one-hundredths of one percent (0.0008) of the estimated total requirement. The fee program will not be crippled or prevented from achieving its goals without MobileMedia's contribution. On the other hand, if the Commission denies MobileMedia's request, its working capital position would be significantly impaired and its ability to compete in the industry would be affected. As a result, the innocent creditors of MobileMedia face the possibility of losing significant dollar amounts without any corresponding offsetting benefit to the public interest.

Conclusion

As illustrated above, a waiver would not undermine the fee program goals and would serve the public interest by meeting the needs of MobileMedia, its creditors, and its subscribers. A waiver also would be consistent with analogous agency decisions granting similar relief to licensees. For the foregoing reasons, it is respectfully requested that the Commission exempt MobileMedia from payment of its regulatory fees. In addition, it is hereby requested that the agency take expedited action concerning the instant waiver request not later than September 14, 1998, the due date for the regulatory fee filing.

If you require further information concerning this matter, please contact Coreen K. Pinkerton at (703) 312-5153.

Respectfully submitted,



Ronald R. Grawert
President and
Chief Executive Officer

¹³ See Assessment an Collection of Regulatory Fees for Fiscal Year 1998, MD Docket No. 98-36, *Report and Order*, FCC 98-115, at ¶ 26 (rel. June 16, 1998).

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Federal Communications Commission
Office of Secretary

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Arlington, VA 22201

Telephone: 703/312 5151
Fax: 703/312 5155

Ronald R. Grawert
President &
Chief Executive Officer

September 9, 1998



MobileComm

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, D.C. 20554

RE: MobileMedia Corporation
SUPPLEMENT TO REQUEST
FOR WAIVER OF FY 1998
REGULATORY FEES

Dear Mr. Fishel:

On August 6, 1998, MobileMedia Corporation and its subsidiaries¹ (collectively "MobileMedia") filed a request for a waiver of its Fiscal Year 1998 (FY 1998) FCC Regulatory Fees (copy enclosed). In addition, MobileMedia requested that the agency take expedited action concerning the waiver request not later than September 14, 1998, the due date for the regulatory fee filing.

If the Commission cannot take action on MobileMedia's waiver request by September 14, 1998, it is respectfully requested that the Commission defer payment of MobileMedia's FY 1998 Regulatory Fees until a decision is made regarding MobileMedia's waiver request.

¹ MobileMedia Communications, Inc., MobileMedia Paging, Inc., MobileMedia DP Properties, Inc., MobileComm of the Southeast, Inc., MobileComm of the MidSouth, Inc., MobileComm of the West, Inc., MobileComm of the Northeast, Inc., MobileComm of the Southwest, Inc., Mobile Communications Corporation of America, MobileComm of Tennessee, Inc., MobileComm of Florida, Inc., MobileComm Nationwide Operations, Inc., MobileComm Southeast Private Carrier Operations, Inc. and FWS Radio, Inc.

If you require further information concerning this matter, please contact Coreen K. Pinkerton at (703) 312-5153.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald R. Grawert". The signature is stylized with a large, looping "R" and a long horizontal stroke at the end.

Ronald R. Grawert
President and Chief Executive Officer

Enclosure